

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

MARSHA BUCK, TROY LEWIS, JEAN LEWIS,)
MIKE HEAD and JANET HEAD, TODD)
CHOWNING, individually and on behalf of all)
others similarly situated,)

Plaintiffs,)

Case No.: 4:13-cv-00801-TCM

vs.)

REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, d/b/a Republic Services)
of Bridgeton, and BRIDGETON LANDFILL, LLC,)

Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Marsha Buck, Troy Lewis, Jean Lewis, Mike Head and Janet Head, Todd Chowning, individually and on behalf of those similarly situated ("Plaintiffs"), for their Class Action Petition against Defendants Republic Services, Inc., Allied Services, LLC, d/b/a Republic Services of Bridgeton and Bridgeton Landfill, LLC, (collectively "Defendants") state as follows:

Introduction

1. Defendants collectively own and/or operate approximately fifty-two (52) acres of land that is/was used as a landfill, located at 13570 St. Charles Rock Rd., Bridgeton, MO 63044 ("Bridgeton landfill").

2. Plaintiffs, tenants and owner-occupants of real property in Bridgeton, Missouri, and those similarly situated, bring this action for damages and injunction against Defendants for their unreasonable negligence and temporary or permanent nuisance, and preliminary and permanent injunction, based on a noxious, offensive and/or putrid odor and other emissions

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Superfund

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Exhibit A

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emanating from Defendants' landfill, caused by a heat-generating event, also called an subsurface smoldering event ("subsurface smoldering event").

3. The subsurface smoldering event has caused an increased release of gas from the landfill because the additional heat causes a faster rate of decomposition of the refuse in the landfill. The result, in addition to the putrid odor, is higher emissions of hydrogen sulfide, carbon dioxide, carbon monoxide, volatile organic compounds, and other compounds.

4. Making matters worse, the subsurface smoldering event is no more than 1200 feet from radioactive waste, which in 1973 was used as daily and intermediate cover in the West Lake landfill, also located at 13570 St. Charles Rock Road, Bridgeton, MO 63044 ("West Lake landfill"). The Bridgeton landfill lies within the boundaries of West Lake landfill. The West Lake landfill also contains various hazardous chemical and industrial wastes.

5. For more than two (2) years, since the subsurface smoldering event started, Plaintiffs have been exposed to this odor and other emissions and have been unable to fully enjoy the use of their properties, have suffered annoyance, and discomfort because the odor is so strong. Upon information, the odor to which Plaintiffs are exposed daily exceeds regulatory limits.

6. In addition, exposure to the odor and emissions has caused certain Plaintiffs irritation to the eyes, nose, or throat. Certain Plaintiffs have experienced other economic losses.

The Parties and Venue

7. Plaintiff Marsha Buck is a lawful, paying tenant at improved real property located at 102 Bing Blvd., Bridgeton, MO 63044. Plaintiff Buck owns a mobile home placed on the property, but signed a lease to rent the real property originally in or about April 2008, and has resided at that address for at least four years.

8. Plaintiff Troy and Jean Lewis are lawful, paying tenants at improved real property located at 16 Terrisan Drive, Bridgeton, MO 63044. Plaintiffs Lewis own a mobile home placed on the property, but signed a lease to rent the real property originally in or about July 1991, and have resided at that address for at least twenty years.

9. Plaintiffs Mike and Janet Head are the owners of certain improved real property located at 12776 San Clemente Drive, Bridgeton, MO 63044. Plaintiffs Head purchased this property on or about July 2006, and have resided there since that time.

10. Plaintiff Todd Chowning is the owner of certain improved real property located at 4165 Gallatin Lane Unit C, Bridgeton, MO 63044. Plaintiff Chowning purchased this property in 2005.

11. Defendant Republic Services, Inc. is a Delaware Corporation, with its principal place of business in the State Arizona. Defendant Republic Services, Inc. conducts business in the State of Missouri.

12. Defendant Allied Services, LLC, d/b/a Republic Services of Bridgeton, is a Delaware limited liability company, with its principal place of business in the State of Arizona. Defendant Allied Services, LLC, d/b/a Republic Services of Bridgeton conducts business in the State of Missouri.

13. Defendant Bridgeton Landfill, LLC, is a Delaware limited liability company with its principal place of business in the State of Missouri.

14. Defendants have owned and/or operated the Bridgeton Landfill for all times relevant to this Petition, but at least as of November 1, 2010.

15. Defendant Bridgeton Landfill, LLC is the owner of the Bridgeton landfill, while Defendants Republic Services, Inc. and Allied Waste Services, LLC, d/b/a Republic Services of Bridgeton¹ operate the Bridgeton landfill.

16. To the extent Defendants Republic Services, Inc. and Allied Waste Services, LLC were not operators of the Bridgeton landfill before the events relevant to this case, they (or their employees or agents) have been present at the Bridgeton landfill since the start of the subsurface smoldering event in approximately November 2010.

17. To the extent Defendants Republic Services, Inc. and Allied Waste Services, LLC were not operators of the Bridgeton landfill before the events relevant to this case, they (or their employees or agents) have been working directly with the Missouri Department of Natural Resources ("MDNR") regarding the subsurface smoldering event since MDNR became involved.

18. To the extent Defendants Republic Services, Inc. and Allied Waste Services, LLC were not operators of the Bridgeton landfill before the events relevant to this case, they (or their employees or agents) otherwise worked with Bridgeton Landfill, LLC and/or have been involved with the decision-making regarding operations of the Bridgeton landfill since the initial discovery of the subsurface smoldering event in approximately November 2010.

19. Alternatively, Defendant Bridgeton Landfill, LLC is the alter ego of Defendants Republic Services, Inc. and/or Defendant Allied Waste Services, LLC, d/b/a Republic Services of Bridgeton. As a consequence, one or both of those Defendants are vicariously liable for the actions of Bridgeton Landfill, LLC.

20. Venue is proper pursuant to §508.010 RSMo.

¹ Upon information, Defendant Allied Waste Services, LLC, d/b/a Republic Services of Bridgeton is the surviving Missouri entity from the merger of Defendant Republic Services, Inc. and Allied Waste Services, Inc., which occurred on or about June 23, 2008.

Facts Relevant to All Counts

21. The Bridgeton landfill was permitted to begin receiving solid waste on November 18, 1985.

22. The Bridgeton landfill ceased accepting waste shipments on December 31, 2004.

23. On or about December 23, 2010, Defendants reported to the Missouri Department of Natural Resources that it was experiencing elevated temperatures on some gas extraction wells.

24. In short, Defendants became aware that a subsurface smoldering² had begun in the south end of the Bridgeton landfill, approximately 100 to 150 feet below the surface.

25. No later than January 2011, the MDNR discovered that monitoring equipment at the site recorded high levels of carbon monoxide and carbon dioxide, and low levels of methane and oxygen.

26. These findings are consistent with a subsurface smoldering event and, upon information and belief, are above normal background levels for the area.

27. In spring 2012, the subsurface smoldering event intensified, reaching the temperature of 190 degrees Fahrenheit.

28. Also in spring 2012, a 40-foot settlement (or collapse) of a section of the landfill occurred.

29. As a by-product of the subsurface smoldering event, the landfill is experiencing an increased rate of decomposition.

30. The increased rate of decomposition results in the release of a significantly higher than normal level of noxious, offensive and/or putrid odors and other emissions.

² Plaintiffs use the term “subsurface smoldering event” because that is what Defendants have used in describing what is occurring in the Bridgeton landfill. Other terms Defendants have used include “subsurface oxidation” and “heat-generating event.”

31. On July 23, 2012, MDNR issued a Notice of Violation to the Bridgeton Landfill, LLC, documenting that Bridgeton landfill was being operated in such a manner so as to cause, or permit to exist, conditions that resulted in the migration of noxious or offensive odors from its premises.

32. MDNR determined that Bridgeton landfill was being operated in a manner that created a public nuisance in violation of §260.210.1(4) RSMo. *See* Feb. 1, 2013 MDNR Order attached hereto as Ex. 1.

33. On January 31, 2013, the St. Louis County Department of Health conducted a compliance inspection of the Bridgeton landfill and found odors equal to or exceeding the 7:1 ratio established by 10 C.S.R. 10-6.165.

34. On February 1, 2013, the MDNR took control of collecting air quality data at the Bridgeton landfill and conducted air monitoring the next day, February 2, 2013.

35. The odors and/or emissions can be detected by human smell at least as far as one mile from the Bridgeton landfill.

36. Odors and/or emissions in excess of regulatory standards have been detected both on and off site.

37. The noxious, offensive, and putrid odors make being outside for any period of time very difficult and unpleasant, at least within one mile of the Bridgeton landfill.

38. Plaintiffs, and those similarly situated, who live within one mile of the Bridgeton landfill, are simply unable to fully enjoy the use of their property outside their homes.

39. Due to the noxious, offensive, and putrid odors and other emissions, Plaintiffs experience annoyance and discomfort.

40. In addition, the noxious, offensive, and putrid odors and other emissions are such that they require Plaintiffs, and those similarly situated, to keep their windows closed more often than usual, when they otherwise would not.

41. The odors and emissions have denied Plaintiffs the ability to breathe fresh, clean air.

42. Such odors and emissions also permeate Plaintiffs' property, impacting the ability to sell that property.

43. Further, Bridgeton landfill lies within the boundaries of the West Lake landfill.

44. The West Lake landfill began operation in the mid-1960s.

45. Upon information and belief, the West Lake landfill accepted various chemical and other industrial wastes, including waste ink, oily sludge, heavy metals, insecticides and herbicides.

46. Upon information and belief, these chemical and other industrial wastes were deposited throughout the West Lake landfill.

47. Further, in 1973 radioactive waste was deposited and used as cover at the West Lake landfill.

48. The subsurface smoldering event at the Bridgeton landfill is no more than 1,200 feet from the radioactive waste at the West Lake landfill.

49. Upon information and belief, the subsurface smoldering event at the Bridgeton landfill is only 500 feet from at least some of the radioactive waste in the West Lake landfill.

50. The subsurface smoldering event is moving in the direction of some of the radioactive waste.

51. There is nothing currently in place preventing the subsurface smoldering event from spreading to that radioactive waste.

52. If the subsurface smoldering event spreads to and reaches the chemical and industrial waste, a hazardous condition will be created.

53. If the subsurface smoldering event spreads to and reaches the radioactive waste, a hazardous condition will be created.

54. If the subsurface smoldering event spreads to and reaches the chemical and industrial waste, airborne chemical emissions from this waste could be released from the confines of the landfill.

55. If the subsurface smoldering event spreads to and reaches the radioactive waste, airborne radioactive emissions could be released from the confines of the landfill.

56. For over two years, Defendants have repeatedly failed and refused to remediate the subsurface smoldering event in spite of these potential dangers and the daily annoyance and distress of Plaintiffs and those similarly situated.

Class Allegations

57. Plaintiffs bring this action for themselves individually and as representatives of a class of all other similarly situated plaintiffs. Plaintiffs intend to seek certification of two classes: (a) an Owner-Occupant Class and (b) a Tenant Class.

58. Plaintiffs initially describe the Owner-Occupant Class as:

All persons who own(ed) and reside(d) on real property in the Spanish Village Subdivision, Terrisan Reste Mobile Home Park, Gallatin Avenue Condominiums, and homes on Foerster Road, Bridgeton, Missouri from November 1, 2010 until present.

Plaintiffs expect to further define the owner-occupants affected by the Bridgeton landfill subsurface smoldering event prior to seeking class certification.

59. Plaintiffs initially describe the Tenant Class as:

All persons who are legal tenants and reside(d) on real property in the Spanish Village Subdivision, Terrisan Reste Mobile Home Park, Gallatin Avenue Condominiums, and homes on Foerster Road, Bridgeton, Missouri November 1, 2010 until present.

60. Excluded from the classes above are Defendants and any of their officers or directors and immediate families, the Court and its immediate family, and any other individuals who have brought individual lawsuits arising from the same allegations against the Defendants.

61. Plaintiffs reserve the right to amend or modify the class definitions and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

62. The two classes are sufficiently numerous that joinder of all members of the class is impracticable. The exact number and identity of all class members may be ascertained by appropriate discovery, but it is Plaintiffs' belief that the proposed classes comprise about 269 households and an estimated 638 residents thereof. Class members may be notified of the pending action by email, mail, and by publication as necessary.

63. There are questions of fact and law common to the class(es), which common questions predominate over questions affecting only individual members. The common questions include, but are not limited to, the following:

- a. whether Defendants' conduct caused the subsurface smoldering event at the Bridgeton landfill;

- b. whether Defendants negligently operated the Bridgeton landfill in such a manner that the subsurface smoldering event occurred;
- c. whether Defendants' failure to stop the subsurface smoldering event or limit its spread was negligent;
- d. whether the subsurface smoldering event at the Bridgeton landfill has caused pollution or fugitive emissions outside the confines of the landfill;
- e. whether the subsurface smoldering event at the Bridgeton landfill has caused a noxious, offensive and/or putrid odor that emanated outside the confines of the landfill;
- f. whether the Defendants operated the Bridgeton landfill in a manner, or permitted conditions at the Bridgeton landfill to be such that a nuisance was created;
- g. identification of the precise geographic area of impact of any noxious, offensive and/or putrid odor, pollution, or fugitive emissions emanating from the Bridgeton landfill caused by the subsurface smoldering event;
- h. identification of the date range(s) of any noxious, offensive and/or putrid odor, pollution, or fugitive emissions emanating from the Bridgeton landfill caused by the subsurface smoldering event; and
- i. whether the subsurface smoldering event at the Bridgeton landfill constitutes an additional threat of exposure to chemical, industrial, and/or radioactive waste emissions based on its proximity to the West Lake landfill.

64. The claims of the representative Plaintiffs are typical of the claims of the members of the classes. Plaintiffs, like all other members of the Classes, have sustained legal injuries arising from Defendants' conduct, as alleged herein. The representative Plaintiffs and the members of the classes have suffered and continue to suffer similar or identical injuries-in-fact caused by the same unlawful conduct engaged in by Defendants.

65. Plaintiffs can and will fairly and adequately represent the interests of the classes and have no interests that conflict with or are antagonistic to the interests of the class. Plaintiffs have retained attorneys who are highly skilled, competent, and experienced in environmental, complex and class action litigation, and who will vigorously assert the claims on behalf of the class members. No conflict exists between Plaintiffs and the classes. Plaintiffs are willing and able to vigorously prosecute this action on behalf of the classes.

66. The class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. common questions of fact and law predominate over any individual questions that may arise, such that the class action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- b. there will be enormous economies to the Court and the parties in litigating the common issues in a class action instead of in multiple individual claims;
- c. class treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class members;

- d. if the size of individual class members' claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and
- e. the trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff Class(es) predominate over any individual issues that may arise.

Claims

Count I - Negligence (Owner-Occupant and Tenant Classes)

67. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 65 as if set forth fully herein.

68. Defendants owed and owe a duty to use reasonable care to avoid causing injury to others in the operation of the Bridgeton landfill, and in the remediation of an ongoing subsurface smoldering event in the landfill.

69. Defendants owed this duty to Plaintiffs and to the members of the classes.

70. Based on the proximity of Plaintiffs' property to the Bridgeton landfill, it was reasonably foreseeable that Plaintiffs would be injured by the noxious, offensive, and/or putrid odors, pollution or fugitive emissions emanating from the subsurface smoldering event at the Bridgeton landfill, and the failure of Defendants to properly remediate the fire.

71. Defendants breached this duty to Plaintiffs by acts and/or omissions, including negligent operation of the Bridgeton landfill in a manner that permitted a subsurface smoldering

event to begin, and noxious, offensive, and/or putrid odors to escape the landfill and/or other negligent acts and/or omissions.

72. The foregoing negligent act(s) and/or omission(s) by Defendants are the proximate cause of injuries suffered by Plaintiffs.

73. Further, a subsurface smoldering event does not ordinarily occur in the absence of negligence.

74. The Bridgeton landfill is controlled by Defendants.

75. Defendants possess superior knowledge regarding what caused the subsurface smoldering event.

76. Plaintiffs and members of the classes have been injured by Defendants' negligence as described above. Plaintiffs and members of the classes are unable to breathe fresh and clean air. Their injuries include damage to their use and enjoyment of the property, value of the property, other economic loss and discomfort and annoyance.

77. Defendants conduct was outrageous because of their evil motive, or showed reckless indifference to the rights of Plaintiffs and those similarly situated.

78. Plaintiffs, and those similarly situated, each seek punitive damages of \$500,000.00.

WHEREFORE, Plaintiffs respectfully pray that this Court certify the Owner-Occupant, and Tenant Classes described herein, and enter judgment in their favor and against Defendants, jointly and severally, to award compensatory and/or restorative damages in an amount in excess of \$25,000.00, plus punitive or exemplary damages in an amount that is fair and reasonable, plus costs incurred in bringing this suit, and for such other and further relief as this Court deems just and proper.

Count II - Temporary Nuisance (Owner-Occupant and Tenant Classes)

79. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 77 as if set forth fully herein.

80. Noxious, offensive and/or putrid odors and other emissions have emanated from the Bridgeton landfill and reached property leased or owned by Plaintiffs, creating a physically offensive nuisance.

81. These odors and emissions are the direct and proximate result of Defendants' intentional, willful and wanton, or negligent conduct in failing to prevent the subsurface smoldering event at the Bridgeton landfill.

82. These odors and emissions are substantial, in many cases exceeding the regulatory limits.

83. The odors and emissions have substantially impaired Plaintiffs' use and enjoyment of their property.

84. The continued subsurface smoldering event at the Bridgeton landfill, and Defendants' continuing failure to extinguish it, along with the resulting noxious, offensive, and/or putrid odors are unreasonable.

85. Plaintiffs and members of the classes have been injured by Defendants' nuisance as described above. Their injuries include loss of use and enjoyment of the property, annoyance, discomfort, property value loss, and other economic loss.

86. Moreover, Defendants are knowingly and willfully permitting the nuisance to continue, and Plaintiffs, and those similarly situated, each request punitive damages of \$500,000.00.

WHEREFORE, Plaintiffs respectfully pray that this Court certify the Owner-Occupant, and Tenant Classes described herein, and enter judgment in their favor and against Defendants,

jointly and severally, to award compensatory and/or restorative damages in an amount in excess of \$25,000.00, plus punitive or exemplary damages in an amount that is fair and reasonable, plus costs incurred in bringing this suit, and for such other and further relief as this Court deems just and proper.

Count III - Preliminary and Permanent Injunction (Owner-Occupant and Tenant Classes)

87. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 85 as if set forth fully herein.

88. The Bridgeton landfill and the resulting odors caused by the subsurface smoldering event constitute an ongoing nuisance that will stop only when the subsurface smoldering event stops, if at all, either by action by Defendants or of its own accord.

89. Damages alone are an insufficient remedy for the annoyance, loss of use and enjoyment of property, and possible deleterious health effects of the emissions and the noxious, offensive, and/or putrid odors.

90. Moreover, there is nothing currently in place that would mitigate the odors, or prevent the subsurface smoldering event from spreading to the chemical, industrial, or radioactive waste in the West Lake landfill.

91. Were the subsurface smoldering event to reach the chemical, industrial, or radioactive waste, that waste could become airborne, resulting in serious health effects for Plaintiffs.

92. Absent an injunction, Plaintiffs will suffer irreparable injury.

93. Plaintiffs have no adequate remedy at law.

WHEREFORE, that this Court preliminarily and permanently enjoin the Defendants from operating the Bridgeton landfill in such a manner that allows the subsurface smoldering event to continue, which produces various emissions and noxious, offensive and/or putrid odors, and risks airborne emission of chemical, industrial or radioactive waste, and for such other and further relief as this Court deems just and proper.

DATED: February 21, 2014

SIMMONS BROWDER GIANARIS ANGELIDES
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of February 2014, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

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